

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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N. THOMAS HEATON,

Plaintiff,

vs.

AMERICAN BROKERS CONDUIT, et al.,

Defendants.

MEMORANDUM DECISION AND  
ORDER ON PLAINTIFF'S MOTION  
TO SET ASIDE

Case No. 2:11-CV-531 TS

This matter is before the Court on Plaintiff's Motion to Set Aside Order.<sup>1</sup> For the reasons discussed below, the Court will deny Plaintiff's Motion.

On September 2, 2011, a Clerk's Judgement was filed in favor of Defendants America's Wholesale Lender, American Brokers Conduit, American Home Mortgage Servicing, Inc., Backman Title Services, Bank of America N.A., Mortgage Electronic Registration Systems, and ReconTrust Company, N.A. against Plaintiff N. Thomas Heaton. On September 20, 2011, Plaintiff filed a Motion to Set Aside that Judgment under Fed.R.Civ.P. 59(e) and 60(b).

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<sup>1</sup>Docket No. 28.

“[A] motion to reconsider filed within [28] days after entry of judgment is considered a Fed.R.Civ.P. 59(e) motion.”<sup>2</sup> In this case, Plaintiff filed his Motion to Set Aside eighteen days after the entry of judgment. The Court will therefore consider this Motion under Rule 59(e).

The Tenth Circuit has recognized the following grounds which warrant a motion to reconsider under Rule 59(e): “(1) an intervening change in the controlling law, (2) new evidence previously unavailable, and (3) the need to correct clear error or prevent manifest injustice.”<sup>3</sup> “Thus, a motion for reconsideration is appropriate where the court has misapprehended the facts, a party’s position, or the controlling law. . . . It is not appropriate to revisit issues already addressed or advance arguments that could have been raised in prior briefing.”<sup>4</sup> As Plaintiff has not alleged any grounds adequate for this Court to reconsider the judgment under Rule 59(e), the Court will deny the Motion.

It is therefore

ORDERED that Plaintiff’s Motion to Set Aside (Docket No. 28) is DENIED.

DATED November 18, 2011.

BY THE COURT:



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TED STEWART  
United States District Judge

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<sup>2</sup>*Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir. 2005) (second alteration to reflect change in Rule 59).

<sup>3</sup>*Id.* (citing *Brumark Corp. v. Samson Resources Corp.*, 57 F.3d 941, 948 (10th Cir.1995)).

<sup>4</sup>*Id.*